

DGST floats a new speed breaker for 75 per cent service tax abatement on GTA!

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ONCE upon a time, the office of the Directorate of Service Tax (fondly called as DGST) was created with much fanfare. Over a period, with the TRU taking up the policy issues of the Service Tax and the CBEC complementing it, the office of the DGST has become an eligible museum. Recognition is the spirit of survival. It is of no surprise as to why the DGST should not crave for!!!

The levy of service tax on Goods Transport Agency services is already a murky pond. Now, it is the turn of beloved forgotten hero, to put his hands into it.

The DGST is understood to have clarified that the

benefit of Notification 32/2004 ST Dated 03.12.2004 (Grant of abatement of 75 % for the purpose of levy of service tax on GTA services), is applicable only when the transport agencies pay the service tax and not when the consignor or the consignee pays the service tax.

As per the amendments made to the Service Tax Rules, 1994, vide Notification 35/2004 ST Dated 03.12.2004, any person who pays or is liable to pay the freight, either by himself or through his agent for the transportation of goods by roads in a goods carriage, has been designated as the “person liable for payment of service tax”, if either the consignor or the consignee falls under any of the specified categories, mentioned therein. By virtue of the above provision, in almost 99 % of the cases, the consignors / consignees have become liable for payment of service tax. Though the Goods Transport Agencies are supposed to pay service tax in all other cases (where neither the consignor nor the consignee is falling under the specified categories), only a handful of GTAs appear to have obtained registration and are paying service tax.

As the cases where neither the consignor nor the consignee would fall under the specified categories are minimal and unorganized, nobody seems to have bothered about it.

Almost all the consignors and consignees, who are paying service tax, as per the above provisions of the Service Tax Rules have been **paying service tax only on 25 % of the freight amount, as per Notification 32/2004, after ensuring that the GTA has not availed any credit on inputs and capital goods for rendering the service.**

Now comes our forgotten hero, with an innovative idea to say that the benefit of the above exemption is available only in those cases where the GTAs are paying service tax (if at all they pay) and not in cases where the consignors and the consignees are paying the service tax.

The said Notification reads as below:

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from so much of the service tax leviable thereon under section 66 of the said Act, as is in excess of the service tax calculated on a value which is equivalent to twenty five per cent, of the gross amount charged from the customer by such goods transport agency for providing the said taxable service.

It is a basic fact that the taxable event for the levy of service tax is the “service” and only the services rendered by a service provider can be exempted. The administrative measure of collecting the service tax from the consignors and consignees has not changed the basic tenet and character of the service. Even though the consignor or the consignee is paying the service tax, the fact remains that “the taxable service is provided by the Goods Transport of Agency, in relation to transport of goods by road, in a goods carriage”. When the service is exempted from payment of service tax, to a specified extent, the person liable for payment of service tax shall calculate his liability, only after availing the benefit of such exemption. Otherwise, it will lead to gross inequity.

It is not known, as to why the DGST has stopped with Notification 32/2004. There is another Notification, viz., 33/2004, which reads as

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of fruits, vegetables, eggs or milk by road in a goods carriage, from the whole of service tax leviable thereon under section 66 of the said Act.

There is also another Notification, viz., 34/2004, which reads as

~~In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is~~

necessary in the public interest so to do, hereby exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from the whole of service tax leviable thereon under section 66 of the said Act, where, -

- (i) the gross amount charged on consignments transported in a goods carriage does not exceed rupees one thousand five hundred; or
- (ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed rupees seven hundred fifty.

All these Notifications are similarly worded, as can be seen from the highlighted portion. What stopped the DGST from saying that all these Notifications are applicable only for the GTAs and not to the consignors and consignees? Conscience?

Let us hope that the Board will intervene, before the revenue brigade starts whipping the assessee community.

NOTE : This is content of the letter sent by DGST to all the Chief Commissioners :

F.No.V/DGST/43-GTO/02/2005/19879 Dated 30th March 2005

Sir,

Sub.: Applicability of Notification No.32/2004 dated 03.12.2004 – Regarding.

It is observed that there is wide spread confusion over the applicability of benefit provided under Notification No.32/2004 dated 03.12.2004 vis-à-vis Notification 35/2004 dated 03.12.2004.

The matter has been examined in this Directorate and it is clarified that the benefit of Notification No.32/2004 dated 03.12.2004 granting an abatement of 75 % from the gross amount charged by goods transport agency for providing the said taxable service, is available only in cases where Goods Transport Agency is liable to pay service tax. This benefit is not available in cases where the provisions of Notification No. 35/2004 dated 03.12.2004 are applicable. (i.e. where the consignee or consignor are from one of the seven categories mentioned therein).

You may suitably inform the jurisdictional Commissioners.